

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GERALD A. WILMER,	§
	§ No. 87, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9603002509
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 28, 2011

Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 12th day of April 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Gerald A. Wilmer, filed an appeal from the Superior Court's January 24, 2011 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in July 1997, Wilmer was found guilty by a Superior Court jury of Unlawful Sexual Intercourse in the First Degree. He was sentenced to 30 years at Level V, to be suspended after 25 years for probation. This Court affirmed Wilmer's convictions on direct appeal.² Wilmer has filed several unsuccessful motions for postconviction relief since that time.

(3) In this appeal from the Superior Court's denial of his Rule 35(a) motion for correction of illegal sentence, Wilmer claims that the Superior Court erroneously denied the motion because a) his indictment was improperly amended; b) the prosecutor engaged in misconduct; c) his attorney provided ineffective assistance; and d) his prosecution was barred by the doctrines of collateral estoppel and *res judicata*.

(4) The narrow function of Rule 35(a) is to permit correction of an illegal sentence, not to re-examine alleged errors occurring at the trial or other proceedings prior to the imposition of sentence.³ Under Delaware law, a sentence is illegal only if it exceeds the statutorily-authorized limits,

¹ Supr. Ct. R. 25(a).

² *Wilmer v. State*, Del. Supr., No. 404, 1997, Walsh, J. (Mar. 6, 1998).

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance or is a sentence that the judgment of conviction did not authorize.⁴

(5) All of Wilmer's claims relate to proceedings that took place prior to the imposition of his sentence. As such, they are not properly asserted under Rule 35(a). Moreover, the claims either have been or could have been asserted previously in one of Wilmer's postconviction motions. Rule 35(a) is not a proper vehicle for re-asserting Rule 61 postconviction claims. Thus, the Superior Court properly denied Wilmer's Rule 35(a) motion.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Id.